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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/844,291      | 04/27/2001  | Richard J. Hibbard   | 28945-042           | 1045             |
| 7590            | 06/29/2004  |                      | EXAMINER            |                  |
|                 |             |                      | FLEMING, FRITZ M    |                  |
|                 |             |                      | ART UNIT            | PAPER NUMBER     |
|                 |             |                      | 2182                |                  |

DATE MAILED: 06/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                 |              |
|------------------------------|-----------------|--------------|
| <b>Office Action Summary</b> | Application No. | Applicant(s) |
|                              | 09/844,291      | HIBBARD      |
|                              | Examiner        | Art Unit     |
|                              | Fritz M Fleming | 2182         |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) Claim(s) 1-14 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-14 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.



FRITZ FLEMING  
PRIMARY EXAMINER  
GROUP 2100

### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 27 April 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachments(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date: _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>7-18-01</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,4,5,7,11,12,13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Kimball.

Kimball clearly discloses a public in the form of a network (350) to which the computer (310) connects via a high-speed primary connection (330—ETHERNET per col. 2, lines 49-57). A back-up interface is seen as the wireless modem (340) in the form of a radio telephone, which then communicates with a local cellular radio telephone system which is in turn connected to a land-line system which is then connected to the network (350) per column 3, lines 40-45. Thus a back-up dial up has been disclosed, which is switched to via switching subsystem (300) when the primary connection fails (column 3). Thus the back-up utility is seen as the status line (320), which instructs the switch (300) of a physical connection presence and “health” of the primary connection to the network. Per columns 3 and 4, the switchover to the secondary network connection is automatic and transparent, thus requiring that any and all links be switched accordingly, as such must happen during an automatic and transparent switchover. Per the abstract and the SUMMARY spanning columns 1-2, when the network port (i.e. primary connection) again becomes operable, the switching subsystem reconnects thereto.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 2,3,6,8,9,10,14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimball.

Kimball teaches "health" status monitoring per columns 3 and 4 to include the successful transmission and reception of data packets, and whether data packets may be successfully transmitted and received. While these are not explicitly taught to be a polling of an IP address and ICMP pings to that address, such are rendered obvious by the explicitly taught successful transmission and reception of data packets, as a "ping" is an old and well known sending of an ICMP echo request message to a host, followed by an ICMP echo reply returned by the host. Thus a "ping" is an obvious example of the "successful transmission and reception of data packets" taught by Kimball. Obviously, a "host" has an IP address, thus claims 8 and 9 are rendered obvious by the teachings

fairly contained in Kimball. The examiner thus takes "official" notice that the use of a "ping" to test for a network connection is old and well known in the art.

Kimball teaches the use of the Ethernet to couple to a computer network in an office environment, and to use the modem to dial up via (ultimately) a landline to the network. The examiner takes "official notice" that it is old and well known in the art to use dial up access to an ISP to establish network connections, and that it is old and well known in the art to connect to the Internet via the Ethernet and to connect to the Internet via the dial up access ISP. Furthermore, the examiner takes official notice that it is old and well known in the art to use VPNs to establish secure tunneling through the Internet for the purpose of remote access with reduced communications costs. Therefor it would have been obvious to one having ordinary skill in the art at the time that the invention was made to connect to the Internet via the primary Ethernet and back up modem, and to use VPNs and the tunnels for secure communications. Obviously, when VPNs are used with the Ethernet, it is obvious to do the same over the dial up back up modem connection.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. "How Networks Work" is cited to provide evidence of well known use of Ethernet to Internet connections, as well as the use of VPNs via the Ethernet/Internet and dial up ISP connections. "TCP/IP" is cited to provide evidence of the old and well-known use of "ping". Archibald et al. teach the use of primary and secondary connections, as do Blackwell et al. and Hassell et al.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fritz M Fleming whose telephone number is 703-308-1483. The examiner can normally be reached on 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Gaffin can be reached on 703-308-1483. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Fritz M. Fleming  
Primary Examiner  
Art Unit 2182

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